IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION.

WRIT PETITION NO. 1640 OF 2002 .

Rajkumar Onkar Jagtap ... Petitioner.
V/s.
Secretary, Kshatrakulotpana ... Respondent.

Ms. A.H. Prabhu i/b N.V. Bandivadekar for the petitioner.

mr.A.N. Samant for the respondent Nos. 1 & 2.

CORAM : V.C.DAGA, J.

DATED : 14.2..2006.

JUDGMENT:

. This petition is filed under Article 226 of the Constitution of India, at the instance of the aggrieved Assistant Teacher, aggrieved and dissatisfied by the order of the School Tribunal, Mumbai, passed in Appeal No. MUM/132/1997 on 17.4.2002, whereby order of termination dated 14.10.1997 issued by the respondent No.1 came to be upheld.

FACTS:

2. It is not in dispute that the petitioner was appointed on probation for 2 years as Assistant Teacher. It is also not in dispute that the petitioner belongs to S.C. category and holds M.A.B.Ed degree. It is also not in dispute that before completion of probation period, services of

the petitioner came to be terminated by giving him one month's notice indicating therein that his work was not satisfactory. It is also not in dispute that during the probation period he was served with memo dated 3.10.1997 with further memos issued from time to time. The School Tribunal after considering the submissions advanced by the parties to the appeal came to the conclusion that termination order dated 14.10.1997 was in accordance with law and that the petitioner was not entitled to reinstatement with full backwages with consequential benefits.

. The aforesaid order of the School Tribunal is the subject matter of challenge in this writ petition filed under Article 226 of the Constitution of India.

RIVAL SUBMISSIONS:

3. The learned Counsel appearing for the petitioner submits that the order of termination is bad in law as it was not preceded by regular enquiry or opportunity of being heard. She further submits that order of termination casts a stigma as such it could not have been upheld by the Tribunal. She placed reliance on the judgment of the Apex Court in the case of **V.P. Ahuja vs. State of Punjab AIR 2000 SC 1080**, wherein the Apex Court has observed

that a probationer, or a temporary servant, is also entitled to certain protection and his services cannot be terminated arbitrarily; in a punitive manner without complying with the principles of natural justice. She, thus, prayed for setting aside impugned order of the School Tribunal.

4. Per contra, learned Counsel appearing for the respondent Nos.1 and 2 -school management submits that the above decision is not applicable to the facts of the present case in view of the subsequent judgment of the Apex Court in the case of **Rajastan State Road Transport Corporation & ors. vs. Zakir Hussain (2005) 7 SCC 447**, wherein the Apex Court has observed as under:

> 29. "The respondent is a temporary employee of the Corporation and a probationer and not a government servant and, therefore, is not entitled for any protection under Article 311 of the Constitution. He was a party to the contract. In view of the fact that the respondent was appointed on probation and the services were terminated during the period of probation simpliciter as the same were not found to be satisfactory, the appellant Corporation is not obliged to hold an enquiry before terminating the services. The respondent being a probationer has got no substantive right to hold the post and was not entitled to a decree of declaration as erroneously granted by the lower courts and also of the High Court."

The Counsel for the respondent thus prayed for dismissal of the petition with costs.

CONSIDERATION:

5. Before considering rival submissions extracted hereinabove, it is necessary to examine observations and findings recorded by the School Tribunal in the impugned order. Relevant portions in the impugned order read as under:

> . " The appellant admitted that during the period of two years probations, he received only one memo dtd. 3.10.1997. The appellant also admitted that he has expressed apology for the act done by him inadvertently. He also also admitted that the lessons were observed by the Principal. Further appellant admitted his signature below the remarks in lesson No.8and admitted observation of lesson of the appellant dtd. 19.7.1997, 26.9.1997, 9.10.1997.
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> . In support of their contentions they have filed the documents on record i.e. Exh.. 1 to 9(a) which goes to show that his work was not satisfactory which was brought to the notice of the appellant by taking his signature in each observation memos. Moreover, it is also seen that the appellant accepted the serious mistakes committed by him with apology to treat as unsatisfactory work to attract termination of the services of appellant. It is also mentioned that Exh. 2,2b, 4,5 & 6 attached with written submission of respondents bears the signature of appellant which are dt. 18.9.96, 19.9.96, 22.10.96, 8.9.96, 19.9.97 respectively during the probation period of appellant.
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> . In the present appeal respondent No.1 is Secretary, Kshetra Kulotpana Maratha Samaj, Parel and respondent No.2 is the principal of the K.M. Samaj Junior College of Education. Respondent No.1 Secretary of the K.M. Samaj Trust runs the respondent No.2- K.M. Samaj Junior College of Education. According to respondent No. 1 and 2 they pleaded in their written statement in para (f) that School Committee

> has already submitted report through C.E. O. to Managing Committee dt. 9.10.97 as per MEPS Rules, 1981 Schedule A(3)(g). It is seen from para 9 of the written statement of respondents that alleged termination is not issued by Principal but it is issued by the Secretary of the K.M. Samaj Trust.
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> . The appellant has filed a document along with appeal memo and letter dt. 30.10.97 issued by Principal Respondent No.2 to the appellant about the appellant's unsatisfactory work and appellant was given an opportunity to improve but no progress was found in the behaviour of the appellant. Therefore, the Principal through School Committee reported the matter to the Managing Committee and its letter received by appellant on 9.10.97."

6. The School Tribunal has recorded categorical findings that the work of the petitioner was found unsatisfactory with the result respondent was required to issue several memos and warnings to him. But there was no improvement in his work. Therefore respondent was compelled to terminate the services of the petitioner.

7. The management is entitled to terminate the services of the probationer at any time during the period of probation on the ground of his incompetency or unsatisfactory work or behaviour as an Assistant Teacher. The relevant provision of section 5(3) reads as under:

> . "If in the opinion of the management the work of any probationer during the period of his probation is not satisfactory the management may terminate his services at

> any time during the period after giving him one months notice or salary of one month in lieu of notice."

The petitioner during the probation period did not acquire any right to the post. If; on being found suitable; had he been regularised; only then he would have acquired the right to continue in the post. The very object of the probation is to test the suitability; and if the appointing authority finds that the candidate is not suitable, it, certainly, has power to terminate the services of employee. Under these circumstances, the reasons mentioned constitutes motive and not foundation for termination of service.

In W.P. No.1580/1997 (Smt. Mangla Abaji Sawant vs. The President, Lorekar Aikyawardhani Mandal, Lone & ors.) a Division Bench of this Court has observed as under:

> . Petitioner was appointed as Jr.Clerk on 16.6.1982 on probation of 2 years. His services were terminated by an order dt. 3.6.1994 on account of unsatisfactory performance. School Tribunal took a view that there was no error in passing the order of termination, that the order of termination of service of petitioner who was a probationer casts no stigma on her. There is no reason to interfere with the order of termination of the services of petitioner."

8. The respondent has also produced original

minute book to demonstrate that the order of termination was preceded by resolution adopted by the management. He has also produced an affidavit filed by Education Officer, wherein he has admitted receipt of additional copies of memos forwarded to their office which were issued to the petitioner from time to time to bring to his notice, about his unsatisfactory work. The impugned order of termination nowhere casts stigma but it only mentions that the services of the petitioner are being terminated for his unsatisfactory work.

9. In the above view of the matter, order of termination was issued in accordance with the provisions of the MEPS Act. If provisions of the Act are complied with then no fault can be found with the order of termination. The provisions of the said Act do not contemplate holding of enquiry if services of probationer are to be dispensed with. From time to time, memos were issued to the petitioner so as to give an opportunity to improve. In this view of the matter, compliance of the principles of natural justice is apparent on the face of the record. The judgment of the Apex Court referred to and cited by learned Counsel for the petitioner is not applicable to the facts and circumstances of the case.

. In the result, petition is dismissed. Rule is discharged with no order as to costs.

(V.C.DAGA,J.)